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Gupta et al.

S/N: 09/747,647

REMARKS

Claims 1-21 are pending in the present application. In the Office Action mailed March 8, 2004, the Examiner rejected claims 1-21 under 35 U.S.C. §103(a) as being unpatentable over Martin et al. (USP 5,809,479) in view of Schoenberg et al. (USP 6,322,502). Applicant respectfully requests reconsideration.

The Examiner has indicated that claims originally numbered 13-22 have been renumbered to claims 12-21 as the application was originally filed without a claim number 12. As such, applicant has reduced the claim number of each of originally filed claims 13-22 by one.

The Examiner rejected claims 1-21 under 35 U.S.C. §103(a) as being unpatentable over Martin et al. in view of Schoenberg et al. stating that "Schoenberg et al. discloses a database monitoring function that allows a user to be alerted when an order is late." (emphasis added, citation omitted) Similar to the first Office Action, the Examiner again takes official notice that proactive and reactive alerting systems are well known in the art and a person of ordinary skill in the art would recognize that alerting systems could be programmed as either proactive or reactive as desired by the user.

Use of Official Notice:

In responding to Applicant's arguments filed December 18, 2003, the Examiner states that "the Examiner did not intend to rely on official notice as part of the rejection as clearly indicated in the rejection." As the Examiner states, "Schoenberg et al. discloses a database monitoring function that allows a user to be alerted when an order is late." Even though the Examiner has reiterated his official notice of proactive and reactive alerting systems, the Examiner states that, "Martin and Schoenberg are cited for disclosing all claimed elements." As MPEP §2144.03 states, "[t]he Examiner may take Official Notice of facts outside of the record which are capable of instant and unquestionable demonstration as being 'well-known' in the art." As the Examiner asserts that "all the claimed elements" are shown in the art of record, such Official Notice is clearly improper. As such, for purposes of appeal, Applicant requests that the Examiner explicitly withdraw the Official Notice of that which he asserts is shown in the art of record. Regardless of the inappropriate use of Official Notice, as the Examiner states, Schoenberg et al. discloses an alert that is provided when an order is late. That is, the alert is reactive to a late order and therefore cannot be proactive to prevent such occurrences. The Schoenberg et al. alert is not proactive in that the alert is not generated in response to anticipated problems, but is generated in response to a problem, i.e., the order is already late. Clearly, such an alert is reactive to an error condition and is not proactive to prevent such errors.

Failure To Establish A *Prima Facie* Case Of Obviousness

The impropriety of the Examiner's use of Official Notice notwithstanding, the Examiner has failed to establish a *prima facie* case of obviousness. The burden of establishing a *prima facie* case of obviousness falls on the Examiner. MPEP §2142. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching or suggestion supporting the combination. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984). Accordingly, to establish a *prima facie* case, the Examiner must not only show that the combination includes each and every element of the claimed invention, but also provide "a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). That is, "[o]bviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art." MPEP §2143.01. "The fact that references can be combined or modified is not sufficient to establish *prima facie* obviousness." Id. (Emphasis added) When prior art references require a selected combination to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gained from the invention itself, i.e., something in the prior art as a whole must suggest the desirability, and thus the obviousness, of making the combination. *Uniroyal Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 U.S.P.Q.2d 1434 (Fed. Cir. 1988).

With respect to the case at hand, as the title of Martin et al. reflects, the system disclosed therein is related to tracking and reporting on-time delivery data. Simply, the system disclosed therein is configured to generate a report from database information. The system of Martin et al. does not report status of work in progress; rather the system reports the status of completed work. "The invention helps a supplier set targeted delivery dates and goals within each customer's expectations, while also providing a statistical analysis of on-time deliveries in accordance with each customer's own evaluation preferences." Col. 2, lns. 9-14. Such a system is entirely reactive in nature. The present invention is proactive, setting forth a system which anticipates a possible late delivery before it occurs and solves the problem of late deliveries rather than maintaining after-the-fact delivery data. Simply put, the invention solves, rather than merely

Gupta et al.

S/N: 09/747,647

identifies, the problem of late deliveries. The present invention is a clear improvement over Martin et al.

In the Response mailed December 18, 2003, Applicant directed the Examiner's attention to the lack of a system maintained and queried database as called for in the present claims. The Examiner noted an apparent lack of support for such a conclusion contrary to the citations provided in the paragraphs immediately preceding the argument set forth on page 10 of the Response submitted December 18, 2003 and reproduced hereafter. Contrary to the Examiner's assertion that the system populates the database, Martin et al. states that "database maintenance is typically performed by customer service representatives of the supplier from within the supplier's order processing computer system." Col. 2, Ins. 45-47. That is, service representatives maintain the database. Martin et al. further states, "the system is programmed to prompt customer service representatives whenever updating is needed, based upon programmed updating periods which are initially specified by the customer service representative." Col. 3, Ins. 22-26. That is, customer service representatives update the system. Martin et al. continues, stating that, "the customer order entry is routed to a human order scheduler for assignment of a targeted ship date" and that "the computer system is programmed to show the order scheduler the calculated customer-preferred ship date and to obtain from the scheduler a targeted ship date for the customer order entry." Col. 3, Ins. 59-66. That is, while Applicant does not necessarily disagree that the system of Martin et al. performs various calculations, the system does not periodically query a database as called for in claim 1, or populate and query a database, or set and display alerts, all as called for in claims 1, 9, and 15.

Explaining a hypothetical example outlined at column 4, lines 34-43, Martin et al. states that, "order entry personnel select second day air delivery" and that "the order is routed to a scheduler who is shown a customer-preferred shipment date of March 13, which accounts for two-day delivery and the customer's desired advance delivery time of two days." Col. 4, Ins. 30-35. Martin et al. continues with the hypothetical stating that, "the scheduler realizes that the shipment cannot be made on that date, and enters a targeted ship date of March 22." Col. 4, Ins. 35-37. That is, order entry personnel and schedulers populate the database. Applicant does not necessarily disagree that Martin et al. discloses a plurality of "calculation steps," however, as cited herein, it is the human interface therewith that populates the database. The database maintenance is performed by customer service representatives, customer service representatives update the database, order schedulers input targeted ship dates, order entry personnel select delivery type, and schedulers input the targeted ship dates. As claim 9 calls for, in part, a computer program causes a computer to populate and periodically query a database. Claim 15

Gupta et al.

S/N: 09/747,647

calls for, in part, a sequence of instructions that when executed by a processor causes the processor to populate and query a database. That which is called for in claims 9 and 15 is not shown in the art of record. Therefore, contrary to the Examiner's assertion, it is not the system of Martin et al. that populates and periodically queries a database, rather it is the human interface therewith, i.e., an operator. As such, that which is called for in claims 9 and 15 is not taught or suggested in the art of record.

Applying the claim terminology to the hypothetical example of Martin et al. referenced above, a customer provides a request date indicating the customer's desired date of delivery. An order entry personnel selects a shipment date based on the customer's desired advance delivery time and preferred delivery to be two days earlier than the request date. A scheduler, realizing that the shipment cannot be made on the shipment date, enters a new shipment date. As such, delivery in the hypothetical example will be provided to the customer nine days after the request date as determined by the scheduler. As such, the system of Martin et al. forces a customer to receive shipment after a customer request date. As such, as called for in claim 1, the system of Martin et al. does not periodically query a database that contains data indicating an order number, a promise date, a request date, a shipment date, and a product category for a plurality of products/services offered, does not compare the promise dates and the request dates as this is performed by the scheduler, and does not set or display a proactive promise alert if a promise date is later than a request date as a scheduler changes the promise date to a date after the customer request date.

Likewise, claim 9, which calls for, in part, a computer-readable medium having a computer program that causes a computer to: populate a database with data to include an order number, a promise date, a request date, a shipment date, and a product category for a plurality of orders, periodically querying the database and comparing promise dates to request dates; setting proactive alerts if the promise date is later than a request date; setting a reactive alert if the shipment date exists and the request date is less than a user-defined number of days prior to the current date; and displaying any promise and shipment alerts by product category and type of alert. Such an automated system is not shown or suggested by Martin et al., Schoenberg et al., or any combination thereof.

Similarly, claim 15, which calls for, in part, a sequence of instructions that cause one or more processors to populate a database with an order date indicating a date when the order is initially made, a request date indicating a date when a customer requests delivery of the order, a shipment date, when available, indicating a date when actual shipment will occur, and a product/service category for each order for a product/service, querying the database and

Gupta et al.

S/N: 09/747,647

comparing promise date to request dates for each order and check for the entry of a shipment date for each order, and setting a reactive alert if a shipment date exists for an order and a request date is less than a user-defined number of days prior to the current date. This system is not shown in Martin et al., Schoenberg et al. or any combination thereof.

Simply, Martin et al. teaches a system whereby a scheduler, based on manufacturing capacity or other parameters, changes a delivery date to a date beyond the request date. Additionally, claims 9 and 15, each of which call for setting and displaying reactive alerts generated through the comparison of a ship date and a request date is not taught, shown, or disclosed in Martin et al. Rather, Martin et al. teaches a scheduler who, based upon internal parameters, redefines the shipment date as a date after the customer request date. As the delivery date of Martin et al. is controlled by a scheduler input upon the review of all orders, there is no reason to include any alert based upon shipment date and request date comparisons. Additionally, as all orders are scheduler verified, there is no motivation to generate any alert in the disclosure of Martin et al. That is, a scheduler manipulates the delivery date based on internal parameters of production capability. As the scheduler adjusts the delivery date based upon these internal parameters, there is no motivation to provide either a reactive or proactive alert determined by either a promise date, a request date, or a shipment date. By manually changing the delivery date, the supplier already knows that a promise date will be later than a request date. As such, there is no reason to generate any alert. Because Martin et al. is interested in after completion report generating, there would be no motivation to combine the system of Martin et al. with any alerting function that may be disclosed in Schoenberg et al. As such, the art of record does not teach or suggest the setting or displaying of a proactive alert if a promise date is later than a request date.

Additionally, the system of Martin et al. is controlled by scheduler inputs, not proactive to delivery problems as is specifically called for in claim 1, for example. The system of Martin et al. "...is programmed in a step 30 to generate on-time product delivery statistics for individual customers." Col. 4, Ins. 54-57. That is, the system does not report the status of work in progress but reports the status of completed work. As shown in the chart in column five of Martin et al., the system generates an on-time shipping report. That is, the work is already completed and is either late or on time. Such a system is reactive to delivery difficulties rather than proactive to overcome processing considerations to directly improve delivery performance - in real time. See claim 5. Martin et al. states that "The system and program described above allow a supplier to easily measure its performance using the same evaluation criteria used by its customers." (Emphasis added) Col. 5, Ins. 47-49. In other words, the work needs to be completed in order to measure the performance. As such, the system of Martin et al. does not teach, or even

Gupta et al.

S/N: 09/747,647

suggest, monitoring the status of work in progress as the customer is only interested in delivery -- or work that is already completed. As such, for at least the reasons set forth above, claim 1, and those claims that depend therefrom, are patentably distinct over the art of record.

Claim 9 calls for a computer program that, in part, populates a database and periodically queries a database. As disclosed in Martin et al. and cited above, it is not the system of Martin et al. that populates the database, but user inputs. Similarly claim 16 calls for a computer data signal that, in part, populates a database and queries the database to compare the data stored therein. As cited above, it is not the system of Martin et al. that populates the database but user inputs. Martin et al. is not the automated proactive/reactive system as is currently claimed. As such, that which is called for in claims 9 and 16, and those claims that depend therefrom, is patentably distinct over the art of record.

The Examiner states that "Schoenberg et al. teaches "proactive monitoring or 'reminders,' as well as tracking orders reactively (see col. 5, Ins. 39-48)." The Examiner further states that "the motivation to combine comes directly from Schoenberg, wherein both reactive and proactive alerts are taught." The Examiner further states that "proactive alerts provide the user with a reminder that action needs to be taken in order to correct the delay." Applicant respectfully disagrees.

The Examiner's statement that "proactive alerts provide the user with a reminder that action needs to be taken in order to correct the delay" is inconsistent with that taught by Schoenberg et al. When Schoenberg et al. sends a "reminder," there is no "delay" yet. In this respect, Schoenberg et al. teaches nothing more than a preset reminder to be sent before each delivery of medication. That is not what is presently claimed.

Schoenberg et al. states that:

Operational reminders are then generated and transmitted to the medical team. The system further permits entry of confirmatory information by the appropriate member of the team to verify that an order has been carried out. Compliance with orders is tracked as well, and the display screen can indicate an alarm or other warning indicator which notifies the medical team that an order has not yet been carried out.

Col. 5, Ins. 41-48

The reminders generated and transmitted to the medical team are not proactive alerts. That is, the reminders indicate a course of action to be taken in all cases; whereas a proactive alert, as called for in the claims, allows the process owners to make adjustments or take special action on a case-by-case basis in order to avoid a process failure, i.e., a late shipment. As defined on page 16 of the specification, the proactive alert is meant to show that an alert may be set while

Gupta et al.

S/N: 09/747,647

there is still time to rectify a possible problem in the process. Unlike a proactive alert, a reminder, as disclosed in Schoenberg et al., is generated for all action items and does not indicate a future failure if unaddressed. That is, the reminder is nothing more than a schedule of intended actions and does not indicate a problem will occur due to the scheduling of the action items. Schoenberg et al. discloses indicating an alarm only in the event that an order has not yet been carried out. As such, the alarm of Schoenberg et al. is reactive to incomplete action items. Schoenberg et al. only discloses reactive alerts in response to action items that have failed to be carried out on an individual basis. There is no disclosure in Schoenberg et al. or Martin et al. for a proactive alert to allow corrective action of future problems on a case-by-case basis, as called for in the present claims. Therefore, claims 1, 9, and 16, which each call for, in part, setting and displaying a proactive alert are patentably distinct over the art of record.

Additionally, in order to support a 35 U.S.C. §103 rejection, the references must not only teach or suggest each and every element of the claims, but must also contain the requisite motivation to combine the references. Notwithstanding the reference's failure to teach or suggest each and every element of the claims of the present invention, the art of record also fails to provide a motivation to combine the references. Additionally, as stated in MPEP §2143.01, "the level of ordinary skill in the art cannot be relied upon to provide the suggestion to combine references," as previously argued, as Martin et al. allows a scheduler to set a delivery date later than a request date, there is no motivation for the system of Martin et al. to provide any alerts. The scheduler, by setting a delivery date after a request date, already knows that the delivery will not meet the customer's request date. Additionally, as Martin et al. is directed to teaching and supporting on-time delivery performance, there is no disclosure for alerting prior to delivery date and conditions. Furthermore, the lack of the relatedness in the on-time delivery, tracking and reporting system of Martin et al. and the medical information system of Schoenberg et al. further supports the lack of motivation of one skilled in the art to combine the references in the manner suggested by the Examiner.

A reasonable combination of Schoenberg et al. and Martin et al. would result in nothing more than the scheduler, a physical person, receiving a reminder to look at each entry and reschedule the delivery date if the promised delivery date cannot be met. This would result in nothing more than a redundant, manual rescheduling system -- that is not what is presently claimed. The present invention, as defined in each independent claim, calls for an automated system that proactively looks for defects on a case-by-case basis.

As the art of record fails to provide each and every element of claims 1, 9, and 15, and lacks any motivation to combine the references as suggested by the Examiner, claims 1, 9, and

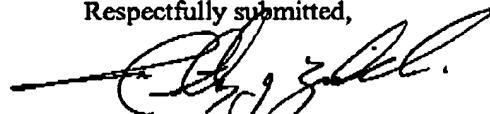
Gupta et al.

S/N: 09/747,647

15, and those claims that depend therefrom, are patentably distinct over the art of record. Therefore, in light of the foregoing, Applicant respectfully believes that the present application is in condition for allowance. As a result, Applicant respectfully requests timely issuance of a Notice of Allowance for claims 1-21.

Applicant appreciates the Examiner's consideration of these Amendments and Remarks and cordially invites the Examiner to call the undersigned, should the Examiner consider any matters unresolved.

Respectfully submitted,



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Dated: May 10, 2004
Attorney Docket No.: GEMS8081.055

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